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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,859	04/08/2005	Michael M. Pupko		9114

7590 09/14/2007
James C Simmons
The Law Office of James C Simmons
11 Falmouth Lane
Williamsville, NY 14221

EXAMINER

WALTERS, JOHN DANIEL

ART UNIT	PAPER NUMBER
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3618

MAIL DATE	DELIVERY MODE
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09/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,859

Applicant(s)

PUPKO, MICHAEL M.

Examiner

John D. Walters

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
4a) Of the above claim(s) 2,7-10,17 and 21-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-6 and 12-16 is/are allowed.
- 6) ☒ Claim(s) 11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20050408 & 20051122.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claims 1, 3 – 6 and 11 – 16 have been examined. Claims 2, 8 – 10, 22 and 23 have been withdrawn via election/restriction by Applicant. Claims 7, 17 and 21 have been indicated as withdrawn by Examiner as reading upon non-elected species. Claims 18 – 20 have been canceled by Applicant.

Election/Restrictions

In response to the election/restriction of 31 July 2007, Applicant selected species V. Species V included a height adjustment attached to a pivot rail. Claim 7 includes the limitation of a height adjustment member being attached to a slidable track. As such, independent claim 7 and its dependent claims are withdrawn from consideration.

Additionally, subsequent listings of claims should include the status identifier (withdrawn) to mark claims that have been withdrawn from consideration. The listing of claims provided with the reply to said election/restriction did not properly mark the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brice (4,353,575) in view of Gorza et al. (2003/0155744). Brice discloses a ski binding comprising:

- a mechanism for attaching a boot to a ski (Fig. 1);
- same mechanism including a housing pivotally attached to a toe end and a structure for height adjustment attached to a heel end (Fig. 1);
- a plate (Fig. 1, item 10);
- a pivot member underlying said plate (Fig. 1, item 22);
- at least one fastener for fixing said plate at an adjusted lateral position (Fig. 1, un-numbered bracket underlying said heel end);
- bindings attached to said plate (Fig. 1, items 12 and 14);
- at least one cutout in said plate (Fig. 2, un-numbered slot underlying a boot).

Brice does not disclose the use of an adjustable length plate. Gorza, however, discloses an adjustment device for ski bindings comprising:

- an extension member attachable to a toe end of a plate for increasing plate length (Fig. 1, item 2).

It would have been obvious to one of ordinary skill in the art at the time the instant invention was made to combine the extension member of Gorza with the binding of Brice in order to modify the position of a toe unit without altering the position of a foot in relation to a ski (Gorza paragraph 14).

Allowable Subject Matter

Claims 1, 3 – 6 and 12 – 16 are allowed. The non-elected species of claim 2 would be rejoined should the application be placed in condition for allowance.

The following is an examiner's statement of reasons for allowance:

In the examiner's opinion, none of the prior art references, taken individually or collectively, teach or anticipate the following limitations found in the independent claim:

a height adjusting structure located at a heel of a ski binding comprising two members with serrated surfaces facing one another and engagable into each other to hold said binding at a specific height.

The prior art relating to adjustable ski bindings is exemplified by Brice (4,353,575) and Sigl (3,675,938). These patents disclose the use of mechanisms to raise and hold a heel of a ski boot, but neither makes use of opposed and complementary toothed plates.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Art Unit: 3618

- Sigl (3,675,938) discloses a ski with an inclined boot platform;
- Nasson (4,094,529) discloses a ski binding adapter;
- Jensen (4,135,335) discloses a blocking-up wedge;
- Shekter (4,408,779) discloses a ski and a ski binding;
- Gertsch (4,438,948) discloses a sole-support plate;
- Goud (5,116,073) discloses a safety binding;
- Lehner et al. (6,065,895) disclose a carrying apparatus for the retaining parts of a ski binding;
- Des Ouches (6,808,196) discloses an element forming an inclined wedge used in a snowboard binding.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Walters whose telephone number is (571) 272-8269. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John D. Walters
Examiner
Art Unit 3618

JDW



CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600